

MEMORANDUM OF AGREEMENT  
BETWEEN

FEDERAL HIGHWAY ADMINISTRATION  
CALIFORNIA DIVISION

AND

UNITED STATES MARINE CORPS  
MARINE CORPS BASE CAMP PENDLETON CALIFORNIA

FOR

THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT  
FOR FOOTHILL TRANSPORTATION CORRIDOR  
OSO PARKWAY TO INTERSTATE 5

INTRODUCTION AND PURPOSE

The Federal Highway Administration (FHWA) has determined that an environmental impact statement (EIS) must be prepared for the Foothill Transportation Corridor Oso Parkway to Interstate 5 (Corridor) under planning by the Foothill/Eastern Transportation Corridor Agency (TCA) and the California Department of Transportation (CALTRANS). Since prior environmental documents have identified Department of Navy real property, located at Marine Corps Base, Camp Pendleton, California, as the preferred alternative for the southern segment of the Corridor; and the use of such real property would require the Secretary of the Navy to execute a property transfer document, the United States Marine Corps (USMC) asserts a significant interest in the scoping, preparation, public participation, and federal decisions associated with the EIS.

The purpose of this Memorandum of Agreement (MOA) is to establish agreed upon principles of organization and coordination in the funding, scoping, preparation, public participation, review, and approval of the EIS. The role of the USMC under this MOA will be limited to matters of interest to the Department of the Navy.

The FHWA and USMC desire to cooperate in the preparation of the EIS pursuant to the applicable provisions of the National Environmental Policy Act (NEPA); Council on Environmental Quality regulations (40 C.F.R. Parts 1500 to 1508); FHWA NEPA regulations (23 C.F.R. Part 771); FHWA Technical Advisory T 6640.8A; and Department of the Navy NEPA regulations (32 C.F.R. Part 775). USMC-specific guidance is found in Marine Corps Order P5090.2.

The FHWA and USMC understand that the EIS will be prepared in partnership with CALTRANS and TCA. As is customary in similar highway projects, TCA will assume the duties of EIS contract administration, with oversight by CALTRANS, FHWA, and USMC. FHWA and USMC will work cooperatively in their oversight capacities. Both FHWA and USMC recognize that each agency must make a separate, final determination concerning the adequacy of the EIS under NEPA and other federal laws and regulations.

This MOA is limited to the preparation of the EIS, and does not constitute an agreement by the Secretary of the Navy to transfer any real property interest in support of the Corridor. The participation of the USMC in the preparation of the Corridor EIS shall not be construed as a commitment to adopt a particular route location or otherwise approve a proposed project alternative.

It is specifically understood by FHWA and USMC that this MOA is neither a contractual agreement nor a delegation of their respective responsibilities. Its purpose is to document a previously agreed upon cooperative approach.

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This agreement is organized with the following provisions:

1. Organization and Coordination
2. Document Content
3. Public Participation
4. Document Review and Approval
5. Agreement Termination/Modification
6. Approval

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## 1. ORGANIZATION AND COORDINATION

a. Overall Lead Agency. The FHWA will be Lead Agency responsible for overall NEPA compliance. The FHWA Lead Agency role is based on their experience and Federal interest in surface transportation.

b. USMC role. The USMC will be a Cooperating Agency for the NEPA process, having special responsibility and oversight for the scope, content, and objectivity of those portions of the EIS which address Department of the Navy interests, as set forth in this MOA.

c. Responsibility for legal defense of EIS. The FHWA assumes primary responsibility for defending the adequacy of the EIS if it is challenged in court. The USMC may participate, at its discretion, in any legal action filed on the basis of EIS adequacy.

d. Responsibility to contract for EIS support services. In its NEPA Lead Agency role, the FHWA will ensure the USMC has reasonable opportunity to review the selection of any contractor(s), in order to validate whether the contractor(s) can perform in an unbiased manner as set forth in USMC and Navy regulations. A contractor will be selected who has the expertise to evaluate the impact of a major roadway on the environment, military training land and airspace, and who understands and will perform consistently with Department of the Navy environmental, land use, and combat training policies.

e. Contractor disclosure statement. FHWA will ensure that all contractors submit a disclosure statement consistent with USMC regulations and guidelines. Within 30 days of the approval of this MOA, the USMC will provide TCA and FHWA with the language and information to be included in such disclosure statements, as required by USMC and Navy guidelines.

f. USMC review of contract and contractor work. The FHWA will ensure the USMC has reasonable opportunity to review the terms and conditions of any proposed contract in support of the EIS, so that such contract will be consistent with this MOA. Of special interest to the USMC is the consistency between the Scoping Document agreed to by FHWA and USMC, and the contract scope of work for the Draft EIS. Any contract for EIS support services will provide for full USMC participation in the review of contractor work relating to a Department of the Navy interest. The FHWA and USMC will be given adequate notice and opportunity to participate in all formal progress reviews of contractor work. A schedule of such progress reviews will be included in the contractor scope of work.

g. USMC and FHWA Project Representatives. The FHWA and USMC will appoint project representatives who will serve as the primary points of contact in EIS oversight matters. Each party may change its designated project representative upon written notice to the other party. The following persons will serve as project representatives for the USMC and FHWA:

FHWA	- James J. Bednar, California Division
USMC	- LtCol C. O. Myers III, Camp Pendleton

h. Additional staff support. The FHWA and USMC project representatives shall have the authority to select appropriate staff, within their respective agencies, to assist them in carrying out the terms of this MOA. The FHWA and USMC project representatives may call a joint meeting of any or all of their support staff, as they deem appropriate. Minutes or appropriate record of all meetings between the project representatives, including joint staff meetings, will be made and provided to both parties.

i. Other cooperating agencies (including Environmental Protection Agency). The FHWA, in coordination with the USMC, will request appropriate Federal and state agencies to participate in the preparation of the EIS as cooperating agencies. Particularly, participation of the U.S. Environmental Protection Agency shall be requested as early as possible for the purposes of: recommending significant environmental issues that should be emphasized in the EIS; providing guidance concerning current research that would be useful in evaluating the impacts of various alternatives; and providing expertise concerning the impact of the Corridor on the water basins affected by the Corridor.

j. San Diego County interests. The FHWA will also request the early participation of the San Diego Association of Governments (SANDAG) to coordinate the involvement of San Diego County area agencies and local governments affected by the Corridor. Specifically, SANDAG will be asked to coordinate this involvement in order to assist in the evaluation of San Diego County land, water, air, and other environmental impacts.

k. USMC role in formal agency coordination under EIS. The FHWA will initiate formal coordination with other agencies, as appropriate, in the preparation and review of the EIS. When such coordination involves environmental impacts or mitigation relating to Department of the Navy interests, the FHWA will involve the USMC in all agency communications, negotiations, and agreements. The FHWA understands that no recommendation, opinion, or decision by another agency, external to this MOA, which pertains to Department of the Navy interests shall be relied upon for development of this EIS without written acceptance by the appropriate Department of the Navy authority.

l. Data provided to other agencies under coordination. In all cases of coordination with other government agencies, where such coordination will include a review of assessment methods, results, and mitigation on Department of the Navy property, the FHWA will give the USMC reasonable opportunity to review and comment on all background material and data provided to other agencies. FHWA will also assure that the USMC is invited to participate in all coordination meetings or communications with other federal or state agencies, when such coordination may involve assessment methods, results, or mitigation affecting Department of Navy interests.

m. Schedule for completion of EIS. The FHWA and USMC project representatives shall mutually develop a schedule for the preparation and completion of the EIS. The schedule will take into account the time needed for contractors to prepare the EIS and related documents; for internal reviews by FHWA, USMC, and other cooperating agencies; and for public review. Best efforts will be made by the USMC and FHWA to comply with the schedule agreed to by the project representatives.

n. Copies of all information to be available to USMC. FHWA will ensure that in all cases where TCA obtains information, analysis, or comment from any contractor, agency, or the public, TCA will make such information, analysis, or comments available to the USMC.

o. Quality assurance for data gathering and analysis. To ensure that the EIS is based on highly reliable, current information, especially for the review of any alternative which uses Department of the Navy land, the FHWA will ensure the EIS preparation process has a quality assurance program. The FHWA will seek the assistance of the USMC in developing a satisfactory quality assurance program.

p. Mitigation monitoring and compliance program. The FHWA and USMC agree that an effective mitigation monitoring and compliance program is required if the Corridor is to use Department of the Navy land. The FHWA and USMC agree to work on the general framework for an effective mitigation monitoring and compliance program. A discussion of that framework will be included in the Draft EIS. The FHWA will also include a mitigation monitoring and compliance program, as approved by the USMC, in the final EIS and in the FHWA Record of Decision.

q. Project proponent actions. During the preparation of the EIS, the TCA, FHWA, USMC and CALTRANS must avoid any actions or commitments which limit the choice among reasonable EIS alternatives. Consistent with this requirement, the FHWA will require TCA to establish a file of copies of all non-privileged communications between TCA and all persons or agencies, and copies of all non-privileged minutes or records of meetings with persons and agencies, where such non-privileged communications, minutes, or records are in any way associated with the planning, design, public support, financing, construction, operation, or maintenance of the Corridor. That file will be available for FHWA and USMC review until the termination of this MOA. The FHWA will terminate its role as Lead Agency of the Corridor EIS if it concludes that the choice of reasonable alternatives has been improperly limited.

r. Parkland Section 4(f) review. If the EIS includes a Parkland Review under Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), the FHWA agrees to include the USMC in all data gathering and analysis under Section 4(f), where that data gathering and analysis involves Department of the Navy real property. Since such a review will likely consider California Department of Parks and Recreation (DPR) interest leased from the Department of the Navy, the FHWA will specifically solicit written comments from the USMC and DPR before including any Parkland 4(f) analysis in a document for public release.

s. TCA Support for USMC Participation. In cases such as this, where there is a specific interest in acquiring Department of the Navy real property, it is appropriate for the project proponent to share the costs of environmental review. The FHWA agrees to cooperate with USMC, TCA, and CALTRANS to assure the project proponent provides timely support for USMC participation in this EIS.

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## 2. DOCUMENT CONTENT

a. Scoping. Following the public scoping process, the FHWA and USMC will work cooperatively with CALTRANS and TCA to prepare a Scoping Document. That Document shall outline with clarity the anticipated contents of the Draft EIS, including the range of project alternatives and environmental impacts; the data to be collected and analyzed; the scope of cumulative impact and secondary effects analysis; the criteria for selecting the "environmentally preferred alternative" and the "agency preferred alternative"; and the potential conflicts between project alternatives and federal, regional, state, and local land use plans, policies, and controls. That Scoping Document shall form the basis for any contractor work on the EIS performed under TCA-sponsorship.

b. Additional environmental studies requested by USMC. The USMC may request the FHWA to cause additional data collection or studies to be performed that are reasonable and necessary to verify and corroborate information and analyses contained in the EIS. If the USMC makes such requests in a timely manner, the FHWA will take appropriate action to obtain the required additional information at no cost to the Department of the Navy.

c. Camp Pendleton environmental consequences and mitigation. The FHWA agrees to involve the USMC in all data collection, data analysis, and mitigation measure development involving Camp Pendleton. In the preparation of the EIS, the parties agree that the definition of "environmental consequences" and their related "mitigation" measures include losses to the Marine Corps' training capability.

d. FHWA and USMC agreement. No Scoping Document, Draft EIS, Final EIS, or FHWA Record of Decision shall be published, or acted upon, prior to the FHWA and USMC making every reasonable effort to reach fundamental agreement on substantive issues relating to Department of the Navy interests.

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### 3. PUBLIC PARTICIPATION

a. Publication of Notice of Intent. The FHWA has previously published a Notice of Intent (NOI) to prepare an EIS. Another NOI will be published at the time public scoping meetings are announced. That NOI will be reviewed by the USMC. USMC approval in writing is required prior to public release.

b. Joint public involvement program. The FHWA will comply with Department of the Navy and USMC NEPA guidance, to the maximum extent practicable, in developing and carrying out a public involvement program.

c. Joint master mailing list. The USMC and FHWA will jointly develop a Master Mailing List of legislative bodies, agencies, institutions, organizations, and individuals who should receive copies of the draft and final EIS, and receive direct mail notice of scoping meetings and public hearings.

d. USMC public affairs issues. The USMC and FHWA will work closely with TCA and CALTRANS to assure the USMC remains the sole contact with the media for Corridor issues having Department of the Navy impact. FHWA will request that TCA and CALTRANS immediately report to the USMC any inquiries from the media, where such inquiries involve Department of the Navy interests.

e. San Diego County scoping meeting. The FHWA will host a minimum of one public scoping meeting in Northern San Diego County, preferably in a coastal community such as Oceanside or Carlsbad.

f. Receipt of comments to EIS. The FHWA will ensure that the USMC receives a copy of any comments regarding the Draft EIS and Final EIS received from other agencies, organizations, or individuals.

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### 4. DOCUMENT REVIEW AND DECISION

a. USMC Environmental Impact Review Board review. The FHWA and USMC agree that, because of possible impacts to Department of the Navy interests, both the Draft EIS and the Final EIS will be reviewed by two Environmental Impact Review Boards: one at Marine Corps Base Camp Pendleton, and the other at Headquarters Marine Corps in Washington, DC. The FHWA will submit both of these documents to these Boards for review prior to public release. The FHWA will address all comments and recommended changes in the documents made by the Boards, or as may be mutually agreed by the FHWA and USMC in writing.

b. Joint preparation of answers to comments. The FHWA and USMC project representatives and their staffs will jointly oversee the preparation of answers to comments and questions received in response to the publication of the Draft EIS. Any such answers involving a Department of the Navy interest must receive USMC written concurrence before publication.

c. EPA review of Draft EIS. The FHWA agrees to work closely with the EPA in an effort to achieve a "lack of objections" rating on the Corridor's environmental impact, and an "adequate" rating on the adequacy of the Draft EIS. The FHWA will take all reasonable action to address EPA-recommended additional data, analysis, and discussion in the publication of the Final EIS.

d. Decisions. Following completion of the entire EIS review process, the FHWA may approve a Record of Decision (ROD). FHWA and USMC expressly understand that any Department of the Navy real estate interest sought to implement the Corridor will be subject to a separate agreement with TCA and CALTRANS.

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## 5. AGREEMENT TERMINATION/MODIFICATION

a. Modification. This MOA may be modified by mutual concurrence of the USMC and the FHWA.

b. Termination. This MOA will be terminated upon approval of the FHWA Record of Decision, or earlier, if the FHWA determines that the Corridor project is no longer an active federal proposal having a significant impact on the human environment.




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6. APPROVAL

This Memorandum of Agreement shall become effective on the latest date of signature and shall remain in force until the approval of the FHWA Record of Decision. In the event of a National Emergency, this MOA will be reviewed and may be set aside and the items become subject to national security provisions of applicable law.

  
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Roger Berg  
California Division Administrator  
Federal Highway Administration  
Department of Transportation

6/17/92  
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Date

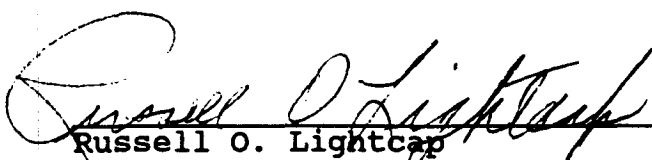
  
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R. B. Johnston  
Commanding General  
Marine Corps Base  
Camp Pendleton, California  
Department of the Navy

10 June 92  
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Date

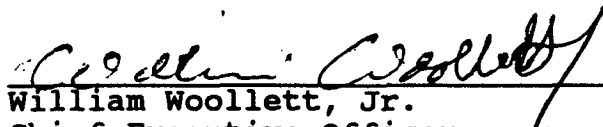
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8. CONCURRENCE

The following agencies concur with this MOA.

  
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Russell O. Lightcap  
District 12 Director  
California Department of Transportation

6/24/92  
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Date

  
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William Woollett, Jr.  
Chief Executive Officer  
Transportation Corridor Agencies

6/24/92  
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Date